

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2012-30

ORDER APPROVING GLOBAL EXPEDITED PACKAGE SERVICES 3 NEGOTIATED
SERVICE AGREEMENT

(Issued June 1, 2012)

I. INTRODUCTION

The Postal Service seeks to include a Global Expedited Package Services 3 (GEPS 3) contract (Agreement) within the GEPS 3 product.¹ For the reasons discussed below, the Commission approves the Request.

¹ Notice of United States Postal Service of Filing Two Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, May 21, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5.

II. BACKGROUND

Product information. GEPS contracts provide customers with the ability to mail products directly to foreign destinations using Express Mail International (EMI), Priority Mail International (PMI), or both. Notice at 4. The instant agreement, attached as Attachment 1A to the Notice, is scheduled to become effective once all regulatory approvals are obtained, and will remain in effect for one calendar year after the effective date, unless terminated earlier. *Id.*, Attachment 1A at 6.

Governors' Decision 08-7 authorizes prices and classifications not of general applicability for GEPS agreements.² GEPS 3 was subsequently added to the competitive product list in Docket No. MC2010-28, and the contract filed in Docket No. CP2010-71 serves as the baseline agreement for comparing potentially functional equivalent agreements under the GEPS 3 grouping.³

Procedural history. On May 21, 2012, the Postal Service filed the Notice stating that it was entering into two additional GEPS 3 contracts. In Order No. 1352, the Commission provided notice of the Postal Service's filing, identified the supporting public and non-public material, appointed a Public Representative, and provided interested persons with the opportunity to comment.⁴ Additionally, Order No. 1352 separated the consideration of the two contracts filed in the Notice, establishing Docket No. CP2012-30 for consideration of the contract attached to the Notice as Attachment 1A, and Docket No. CP2012-31 for consideration of the contract attached to the Notice as Attachment 1B.

² The referenced Governors' Decision appears as Attachment 3 to the Notice. It was originally filed in Docket No. CP2008-5.

³ See Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010 (Order No. 503).

⁴ Notice and Order Concerning Filing of Two Additional Global Expedited Package Services 3 Negotiated Service Agreements, May 23, 2012 (Order No. 1352).

III. THE POSTAL SERVICE'S POSITION

The Postal Service states that the instant Agreement is in accordance with Order No. 503. Notice at 2. It reviews the reasons that it believes the instant Agreement fits within the Mail Classification Schedule language for GEPS 3 contracts. *Id.* at 3. It also addresses functional equivalency, including a discussion of similarities and differences between the instant Agreement and the baseline agreement. *Id.* at 3-6. It asserts that the instant Agreement possesses similar cost and market characteristics and identical functional terms to the baseline agreement. *Id.* at 3. It also states that the instant agreement provides comparable benefits to the Postal Service as the baseline agreement. *Id.*

The Postal Service identifies 12 differences between the instant Agreement and the baseline agreement, *e.g.*, revised options for tendering the mail, minimum revenue commitment, customs and export requirements, an exception of Flat Rate items from the definition of qualifying mail, and an additional article concerning Intellectual Property, Co-Branding, and Licensing. *Id.* at 4-5. The Postal Service states that the differences affect neither the fundamental service that it is offering nor the fundamental structure of the contract. *Id.* at 6. Discussing both the instant Agreement and the contract under consideration in Docket No. CP2012-31, it asserts that “[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these two GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts.” *Id.* at 4.

The Postal Service concludes that its filing demonstrates that the instant Agreement complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the GEPS 3 baseline agreement. Therefore, it requests that the instant contract be included within the GEPS 3 contract product. *Id.* at 6.

IV. COMMENTS

The Public Representative filed comments on May 30, 2012.⁵ No other interested person submitted comments. The Public Representative states that the instant Agreement appears to satisfy the requirements set forth by 39 U.S.C. 3633(a) and 39 CFR 3015.7(c), noting that the contract appears able to generate sufficient revenue to cover attributable costs, enables competitive products as a whole to cover costs, and contributes a minimum of 5.5 percent to the Postal Service's institutional costs. PR Comments at 1-2. The Public Representative acknowledges that the pricing of the instant Agreement reflects appropriate increases in costs, yet still comports with the requirements of Governors' Decision 08-7. *Id.* at 1. The modifications in terms do not affect the functional equivalence of the instant Agreement. *Id.* at 2.

V. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that the instant Agreement (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. 3633 and applicable Commission rules.

Functional equivalence. The Commission has reviewed the Postal Service's reasons for concluding that the instant Agreement shares similar cost and market characteristics with the baseline agreement, meets the pricing formula and classification established in Governors' Decision No. 08-7, and comports with 39 U.S.C. 3633 and the Commission's rules. It has also considered the Public Representative's views. It agrees that the instant Agreement and the baseline agreement are substantially similar and that any differences between the two do not appear to contravene a finding of functional equivalency. The Commission therefore concludes that the instant Agreement may be included in the GEPS 3 product.

⁵ Public Representative Comments, May 30, 2012 (PR Comments).

Cost considerations. The financial data the Postal Service has filed support the conclusion that the prices for the instant Agreement satisfy the three requirements in 39 U.S.C. 3633(a), as addressed below.

The Commission has reviewed the Notice, supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the instant Agreement should cover its attributable costs, as required by 39 U.S.C. 3633(a)(2). It finds that the Agreement should not result in competitive products being subsidized by market dominant products as prohibited by 39 U.S.C. 3633(a)(1). It also finds the Agreement should have a positive effect on competitive products' contribution to institutional costs, consistent with 39 U.S.C. 3633(a)(3). Accordingly, a preliminary review of the instant Agreement indicates that it is consistent with the provisions applicable to rates for competitive products. The Commission therefore finds that the instant Agreement is appropriately included within the GEPS 3 product.

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the instant Agreement. The Postal Service shall promptly inform the Commission if the instant Agreement is terminated by either party prior to the end of its scheduled one-year term. In addition, within 30 days of the termination of the instant Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2012-30 is included within the Global Expedited Package Services 3 (MC2010-28) product.
2. The Postal Service shall promptly notify the Commission of the effective date of the instant Agreement.

3. The Postal Service shall notify the Commission upon termination of the instant Agreement by either party in accordance with the terms set out in the body of this Order.
4. Within 30 days of the termination of the instant Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

By the Commission.

Ruth Ann Abrams
Acting Secretary